



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Jan Witold Baran
Caleb P. Burns
Andrew G. Woodson
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006

DEC 19 2016

RE: MUR 7070
Congressional Leadership Fund
Caleb Crosby, in his official capacity
as Treasurer

Dear Messrs. Baran, Burns, and Woodson:

On May 24, 2016, the Federal Election Commission notified your clients, Congressional Leadership Fund and Caleb Crosby, in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint and information supplied by your clients, the Commission, on December 6, 2016, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009).

If you have any questions, please contact Joanna Waldstreicher, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Jin Lee", is written over a printed name and title.

Jin Lee
Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

4 **RESPONDENT:** Congressional Leadership Fund and Caleb **MUR 7070**
5 Crosby in his official capacity as treasurer

6 **I. INTRODUCTION**

7 This matter involves allegations that Representative Paul D. Ryan exercised control over
8 an independent-expenditure-only political committee, Congressional Leadership Fund and Caleb
9 Crosby in his official capacity as treasurer ("CLF"), in violation of 52 U.S.C. § 30125(e)(1). In
10 support of that claim, the Complaint cites a news article asserting that Ryan spoke with
11 respondent Mason Fink about Fink taking a position with CLF, thus, the Complaint concludes
12 that Ryan exercised control over CLF's hiring. Based on that conclusion, the Complaint further
13 alleges that Ryan and CLF violated section 30125(e)(1) because CLF raised and spent funds
14 outside the limits of the Act and Ryan is prohibited from controlling such a political committee.
15 CLF and Ryan deny that Ryan acted on CLF's behalf in recruiting or hiring Fink, or had
16 authority to do so. As discussed in more detail below, although there is support for a few of the
17 facts alleged in the Complaint, the information relied upon by the Complaint is vague overall,
18 and the responses largely rebut the contention that Ryan controlled CLF. Accordingly, the
19 Commission, in the exercise of its prosecutorial discretion, dismisses the allegations that CLF
20 violated 52 U.S.C. § 30125(e).¹

21 **II. FACTUAL BACKGROUND**

22 Respondent CLF is an independent-expenditure-only political committee, registered with
23 the Commission since 2011.² Crosby is CLF's treasurer.³ At the beginning of 2016, CLF was

¹ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

² CLF, Statement of Organization (Oct. 24, 2011):

1 managed by a board with four directors: Norm Coleman, Fred Malek, Tom Reynolds, and Vin
2 Weber.⁴ Coleman, Reynolds, and Weber sought to leave their positions, and CLF's board
3 considered a plan to reduce the board to two members, and it also considered several people to
4 fill the one seat that would become vacant.⁵

5 One of the people considered for the vacant seat was Mason Fink. CLF's president, Mike
6 Shields, contacted Fink about the possibility of his serving on CLF's board of directors, and Fink
7 confirmed that he would be willing to serve on CLF's board.⁶

8 At its May 6, 2016 meeting, the CLF board adopted a series of resolutions to reduce the
9 Board to two directors, and to appoint Fink as a Director and as CLF's Secretary.⁷ After the
10 May 6 meeting, Shields informed Fink of these actions, and Coleman contacted Fink to formally
11 convey the offer.⁸

12 The complaint alleges that Ryan was closely involved in selecting, recruiting, and hiring
13 Fink to serve on CLF's board, based on an April 27, 2016, article in *Politico* stating that "Fink
14 was personally approached by House Speaker Paul Ryan to take the job."⁹ This statement forms
15 the basis for the complaint's allegations that Ryan selected Fink for CLF's board and personally
16 offered him the position, and thus, Ryan exercised control over CLF. Consequently, the

³ CLF, Amended Statement of Organization (Jan. 24, 2014).

⁴ CLF Resp. at 1 (Jul. 18, 2016); Mike Shields Decl. at ¶ 7 (Jul. 14, 2016) ("Shields Decl.").

⁵ CLF Resp. at 2; Shields Decl. at ¶ 8.

⁶ CLF Resp. at 2; Shields Decl. at ¶ 10.

⁷ CLF Resp. at 2; Shields Decl. at ¶ 11-12 (citing CLF Board Meeting Minutes (May 6, 2016), attached as Ex. A).

⁸ CLF Resp. at 3; Shields Decl. at ¶ 13.

⁹ Compl. at 2 (May 19, 2016); Alex Isenstadt, *Congressional Super PAC Brings On Romney Aide to Defend House*, POLITICO (Apr. 27, 2016), <http://www.politico.com/blogs/2016-gop-primary-live-updates-and-results/2016/04/congressional-super-pac-brings-on-romney-aide-to-defend-senate-222511>.

1 Complaint alleges that respondents violated 52 U.S.C. § 30125(e)(1) due to CLF's raising and
2 spending funds outside the limits and prohibitions of the Act.¹⁰

3 CLF and Ryan deny that Ryan was involved in CLF's selection, recruitment, or hiring of
4 Fink or otherwise acted on CLF's behalf.¹¹ CLF further denies that Ryan has ever had any
5 authority to control CLF's management or personnel decisions.¹² Ryan also denies that he
6 approached Fink to offer him a position with CLF, stating that he merely left Fink a phone
7 message to congratulate him after he had accepted the position on CLF's board.¹³

8 III. LEGAL ANALYSIS

9 The Act provides that federal candidates, officeholders, agents of candidates, or "an
10 entity directly or indirectly established, financed, maintained or controlled by or acting on behalf
11 of" a candidate or officeholder shall not "solicit, receive, direct, transfer, or spend funds in
12 connection with an election for Federal office, including funds for any Federal election activity,
13 unless the funds are subject to the limitations, prohibitions, and reporting requirements of this
14 Act."¹⁴ To determine whether an entity is "established, financed, maintained or controlled by" a
15 person, the Commission considers ten non-exhaustive factors "in the context of the overall
16 relationship between sponsor and the entity."¹⁵ These factors include, among others, "[w]hether
17 a sponsor, directly or through its agent, has the authority or ability to hire, appoint, demote, or
18 otherwise control the officers, or other decision-making employees or members of the entity."¹⁶

¹⁰ *Id.* at 4.

¹¹ CLF Resp. at 3, 6; Ryan Resp. at 1 (July 16, 2016).

¹² CLF Resp. at 3, 6; Shields Decl. at ¶ 14.

¹³ Ryan Resp. at 2 (Jul. 15, 2016).

¹⁴ 52 U.S.C. § 30125(e)(1)(A); *see also* 11 C.F.R. §§ 300.60, 300.61.

¹⁵ *See* 11 C.F.R. § 300.2(c)(2); Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 F.R. 49064, 49084 (July 29, 2002); Factual and Legal Analysis at 4-5, MUR 6753 (People for Pearce).

¹⁶ 11 C.F.R. § 300.2(c)(2)(iii).

1 The information suggesting that the respondents might have violated the Act is unclear.
2 The Complaint cites a statement taken from a news article as evidence that Ryan played a
3 significant role in selecting, recruiting, and hiring Fink. If Ryan played such a role, his actions
4 might establish one of the ten factors considered in determining whether he established,
5 financed, maintained, or controlled CLF. However, the quoted statement that "Fink was
6 personally approached by House Speaker Paul Ryan to take the job"¹⁷ does not, by itself, support
7 a reasonable inference that Ryan had the "authority or ability to hire" Fink under section
8 300.2(c)(2)(iii). Because the article does not specifically describe the content of the alleged
9 conversation, it is unclear whether Ryan was actually offering the job to Fink on behalf of CLF
10 or encouraging him to take a position for which he was being considered. Although the April 27,
11 2016, article correctly predicted that CLF would hire Fink, which did not occur until CLF's May
12 6, 2016, board meeting, the quoted statement is ambiguous as to Ryan's role, if any, in recruiting
13 Fink.

14 Moreover, CLF and Ryan deny that Ryan played any part in selecting, recruiting, or
15 hiring Fink, and they assert that the quotation in the *Politico* article is inaccurate.¹⁸ According to
16 CLF, the decision to hire Fink was made solely by CLF's board of directors,¹⁹ and Ryan does not
17 appear to be a board member or an officer of the Committee. Although the article suggests Ryan
18 may have communicated with Fink before CLF hired him, Ryan's Response states that "Mr.
19 Ryan never spoke with Mr. Fink prior to his acceptance of a position with the [CLF]" and

¹⁷ Isenstadt, *supra* note 10.

¹⁸ CLF Resp. at 6-7; Shields Decl. at ¶¶ 14-15; Ryan Resp. at 2.

¹⁹ CLF Resp. at 6; Shields Decl. at ¶ 15.

1 contends that he only left a telephone message for Fink to congratulate him on the position after
2 CLF placed Fink on its board.²⁰

3 Without any information indicating that any of the other factors set forth in section
4 300.2(c)(2) are present with respect to CLF and Ryan, "the context of the overall relationship"
5 between Ryan and CLF appears to consist solely of Ryan's communication with Fink. The lack
6 of information about any of the other factors, the ambiguity of the statement from the *Politico*
7 article, and the respondents' direct denials regarding Ryan's alleged control over CLF suggest
8 that additional enforcement proceedings would not be warranted here. Therefore the
9 Commission exercises its prosecutorial discretion to dismiss the allegation that CLF violated 52
10 U.S.C. § 30125(e).²¹

²⁰ Ryan Resp. at 5.

²¹ See *Heckler*, 470 U.S. at 821; Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545, 12546 (Mar. 16, 2007) (recognizing that, in the exercise of its prosecutorial discretion, "the Commission will dismiss a matter when the matter does not merit further use of Commission resources, due to factors such as the small amount or significance of the alleged violation [or] the vagueness or weakness of the evidence," among other reasons).